

**THE TENNESSEE REGULATORY AUTHORITY**

**AT NASHVILLE, TENNESSEE**

**December 8, 2003**

<b>IN RE:</b>	)	
	)	<b>DOCKET NO.</b>
<b>CHATTANOOGA PUBLISHING COMPANY</b>	)	<b>03-00369</b>
<b>D/B/A CHATTANOOGA TIMES FREE PRESS</b>	)	

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**ORDER APPROVING SETTLEMENT AGREEMENT**

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This matter came before Chairman Deborah Taylor Tate, Director Pat Miller and Director Ron Jones of the Tennessee Regulatory Authority (the “TRA” or “Authority”), the voting panel assigned to this docket, at a regularly scheduled Authority Conference held on October 21, 2003, for consideration of a proposed Settlement Agreement between the Consumer Services Division of the TRA (the “CSD”) and Chattanooga Publishing Company d/b/a Chattanooga Times Free Press (“Chattanooga Publishing” or the “Company”) related to alleged violations of the Tennessee Do-Not-Call Telephone Sales Solicitation statutes.<sup>1</sup> The proposed Settlement Agreement is attached hereto as Exhibit A.

Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-11-.07(1) prohibit persons and entities from knowingly making or causing to be made telephone sales solicitation calls to any residential subscribers in this state who have given timely and proper notice to the Authority of their objection to receiving telephone solicitations. Tenn. Code Ann. § 65-4-405(d) requires persons or entities desiring to make telephone solicitations to residential subscribers to register in the Do-Not-Call program. Tenn. Code

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<sup>1</sup> See Tenn. Code Ann. § 65-4-401 *et seq.*

Ann. § 65-4-405(f) authorizes the Authority to initiate proceedings relative to violations of the Do-Not-Call statutes and the TRA rules and regulations promulgated pursuant to the Do-Not-Call statutes.<sup>2</sup> “Such proceedings may include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation and to seek additional relief in any court of competent jurisdiction.”<sup>3</sup>

The CSD’s investigation in this docket commenced after it received two complaints (TRA File No.T02-00674) on December 27, 2002, alleging that the complainant, a person properly listed on the Do-Not-Call register, received a telephone solicitation from Chattanooga Publishing on December 10, 2002 and another on December 17, 2002. The CSD provided Chattanooga Publishing with notice of this complaint on January 27, 2003.

The CSD received a third complaint (TRA File No.T03-00096) on February 27, 2003, alleging that the complainant, a person whose residential telephone number is properly listed on the Do-Not-Call register, received an unlawful telephone solicitation from Chattanooga Publishing on February 16, 2003. The CSD provided Chattanooga Publishing with notice of this complaint on March 3, 2003.

The proposed Settlement Agreement was negotiated as a result of the CSD’s investigation into the complaints against Chattanooga Publishing. The maximum penalty faced by Chattanooga Publishing in this docket is six thousand dollars (\$6,000) arising from the three complaints. In negotiating the terms and conditions of this Settlement Agreement, the CSD took into consideration Tenn. Code Ann. § 65-4-116(b), which provides:

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<sup>2</sup> See Tenn. Comp. R. & Regs. 1220-4-11-.01 *et seq.*

<sup>3</sup> Tenn. Code Ann. § 65-4-405(f).

In determining the amount of the penalty, the appropriateness of the penalty to the size of the business of the person, firm or corporation charged, the gravity of the violation and the good faith of the person, firm or corporation charged in attempting to achieve compliance, after notification of a violation, shall be considered. The amount of the penalty, when finally determined, may be deducted from any sums owing by the state to the person, firm or corporation charged or may be recovered in a civil action in the courts of this state.

Chattanooga Publishing is a company located in Chattanooga, Tennessee. Chattanooga Publishing registered in the Do-Not-Call Program on May 15, 2000. During the CSD's investigation, Chattanooga Publishing commenced its own investigation, did not dispute that the calls were made and expressed an interest in resolving this matter. Chattanooga Publishing also agreed to pay to the Authority the amount of three thousand dollars (\$3,000) in settlement of these violations no later than thirty (30) days from the date the Authority approves the Settlement Agreement.<sup>4</sup> In addition, Chattanooga Publishing renewed its registration with the TRA as a telephone solicitor on June 27, 2003.

A representative of Chattanooga Publishing, Mr. Matthew Salada, participated telephonically during the Authority Conference on October 21, 2003. Following a discussion with the parties and a review of the Settlement Agreement, the Directors voted unanimously to accept and approve the Settlement Agreement.

**IT IS THEREFORE ORDERED THAT:**

1. The Settlement Agreement, attached hereto as Exhibit A, is accepted and approved and is incorporated into this Order as if fully rewritten herein.
2. The amount of three thousand dollars (\$3,000) shall be paid by Chattanooga Publishing to the TRA no later than thirty (30) days from the date of the Authority's approval of the Settlement Agreement.


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<sup>4</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, referencing Docket No. 03-00369.

3. Upon payment of the amount of three thousand dollars (\$3,000) and compliance with the terms of the Settlement Agreement attached hereto, Chattanooga Publishing is excused from further proceedings in this matter, provided that, in the event of any failure on the part of Chattanooga Publishing to comply with the terms and conditions of the Settlement Agreement, the Authority reserves the right to re-open this docket.

  
Deborah Taylor Tate, Director

  
Pat Miller, Director

  
Ron Jones, Director

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

IN RE:	)	
	)	
ALLEGED VIOLATIONS OF TENN.	)	
CODE ANN. §65-4-401 <i>et seq.</i> , DO-NOT-	)	
CALL SALES SOLICITATION LAW,	)	DOCKET NO. 03-00369
AND RULES OF TENNESSEE	)	
REGULATORY AUTHORITY,	)	
CHAPTER 1220-4-11, BY:	)	DO-NOT-CALL T02-00674
	)	PROGRAM T03-00096
CHATTANOOGA PUBLISHING	)	FILE NUMBERS
COMPANY D/B/A CHATTANOOGA	)	
TIMES FREE PRESS	)	

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**SETTLEMENT AGREEMENT**

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This Settlement Agreement has been entered into between the Consumer Services Division ("CSD") of the Tennessee Regulatory Authority ("TRA") and Chattanooga Publishing Company ("Chattanooga Publishing"). This Settlement Agreement pertains to any and all alleged violations of the Tennessee Do-Not-Call Telephone Solicitation law, TENN. CODE ANN. § 65-4-401 *et seq.*, and its concomitant regulations, TENN. COMP. R. & REGS. 1220-4-11.07, alleged by any and all complainants to have been committed by Chattanooga Publishing prior to the execution of this Settlement Agreement, whether said complaints and alleged violations were known or unknown to the CSD, including but not limited to the complaints represented by the file numbers captioned above. This Settlement Agreement is subject to the approval of the Directors of the TRA.

**EXHIBIT**

**A**

The CSD's investigation in this docket commenced after it received two complaints (TRA File No.T02-00674) on December 27, 2002, alleging that the complainant, a person whose residential telephone number is properly listed on the Do-Not-Call register, received an unlawful telephone solicitation from Chattanooga Publishing on December 10, 2002 and December 17, 2002. The CSD provided Chattanooga Publishing with notice of these complaints on January 27, 2003. The CSD received a third complaint (TRA File No.T03-00096) on February 27, 2003, alleging that the complainant, a person whose residential telephone number is properly listed on the Do-Not-Call register, received an unlawful telephone solicitation from Chattanooga Publishing on February 16, 2003. The CSD provided Chattanooga Publishing with notice of this complaint on March 3, 2003.

TENN. CODE ANN. § 65-4-404, and TENN. COMP. R. & REGS. 1220-4-11.07(1), prohibit persons from knowingly making or causing to be made telephone sales solicitation calls to residential subscribers in this state who have given timely and proper notice to the TRA of their objection to receiving telephone solicitations. TENN. CODE ANN. § 65-4-405(f) authorizes the TRA to assess penalties for violations of the Tennessee Do-Not-Call statutes, including the issuance of a cease and desist order and the imposition of a civil penalty of up to a maximum of two thousand dollars (\$2,000) for each knowing violation. The maximum fine faced by Chattanooga Publishing in this proceeding is six thousand dollars (\$6,000), arising from the three (3) unsolicited telephone solicitations mentioned above.

In negotiating this Settlement Agreement, the CSD relied upon the factors stated in TENN. CODE ANN. § 65-4-116(b), including the Company's size, financial status,

good faith, and the gravity of the violation. Chattanooga Publishing is located in Chattanooga, Tennessee. It employs approximately five hundred seventy-five (575) persons. Chattanooga Publishing initially registered in the Do-Not Call Program on May 15, 2000. Chattanooga Publishing has annually renewed and maintained its registration to the Do-Not-Call register. Chattanooga Publishing renewed its registration on July 2, 2002 for the current registration period and receives a monthly copy of the Do-Not-Call register. After receiving notice of the complaints, Chattanooga Publishing contacted the CSD and expressed an interest in resolving this matter. The CSD has received no additional complaints against Chattanooga Publishing from Tennessee consumers since February 28, 2003.

In an effort to resolve the complaints represented by the file numbers captioned above and any other alleged violations of TENN. CODE ANN. § 65-4-401 *et seq.* by Chattanooga Publishing prior to the execution of this Settlement Agreement, whether known or unknown to the CSD, the CSD and Chattanooga Publishing agree to settle said complaints and alleged violations based upon the following acknowledgements and terms, subject to approval by the Directors of the TRA:

1. Chattanooga Publishing's participation in this Settlement Agreement is not an admission that any complaint including, but not limited to, the complaints pertaining to TRA File Nos. T02-00674 and T03-00096, are true and valid complaints and alleged violations and/or that it acted in violation of TENN. CODE ANN. § 65-4-404 and/or TENN. COMP. R. & REGS. 1220-4-11.07.
2. After receiving notice of the complaints, Chattanooga Publishing contacted CSD and expressed an interest in resolving this matter.


3. Chattanooga Publishing agrees to pay three thousand dollars (\$3,000.00) in settlement of all complaints and alleged violations referenced above in this Settlement Agreement, and agrees to remit the amount of three thousand dollars (\$3,000.00) to the Authority no later than thirty (30) days after the Directors of the TRA approve this Settlement Agreement.<sup>1</sup> Upon payment of the amount of three thousand dollars (\$3,000.00) in compliance with the terms and conditions of this Settlement Agreement, Chattanooga Publishing is excused from further proceedings in this matter.
4. Chattanooga Publishing agrees to comply with all provisions of the Tennessee Do-Not-Call Telephone Sales Solicitation law and regulations.
5. Chattanooga Publishing agrees that a company representative will participate telephonically in the Authority Conference during which the Directors consider this Settlement Agreement.
6. In the event that Chattanooga Publishing fails to comply with the terms and conditions of paragraph 3 of this Settlement Agreement, the Authority reserves the right to re-open this docket. In the event that Chattanooga Publishing breaches numbered paragraph 3 of this Settlement Agreement, it shall pay any and all costs incurred in enforcing numbered paragraph 3 of this Settlement Agreement. Should any violation of the provisions of paragraph 4 occur subsequent to the date of this Settlement Agreement, such violation shall be treated as a new violation and shall not be deemed cause to re-open this docket.

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<sup>1</sup> The payment may be made in the form of a check, payable to the Tennessee Regulatory Authority, sent to 460 James Robertson Parkway, Nashville TN 37243, referencing TRA Docket Number 03-00369.

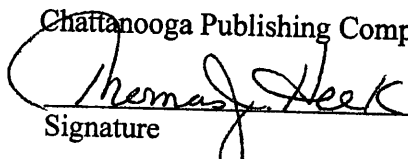


7. If any clause, provision or section of this Settlement Agreement for any reason is held to be illegal, invalid or unenforceable, such illegality, invalidity or unenforceability, shall not affect any other clause, provision or section of this Settlement Agreement and this Settlement Agreement shall be construed and enforced as if such illegal, invalid or unenforceable clause, section or other provision had not been contained herein.
8. This Settlement Agreement represents the entire agreement between the parties, and there are no representations, agreements, arrangements or understandings, oral or written, between the parties relating to the subject matter of this Settlement Agreement which are not fully expressed herein or attached hereto.

  
Eddie Roberson  
Chief, Consumer Services Division  
Tennessee Regulatory Authority

9-15-03  
Date

Chattanooga Publishing Company

  
Signature

Thomas J. Heck  
Print Name

Circulation Sales Manager  
Print Title

8-29-03  
Date